BEFORE THE PUBLIC UTILITIES COMMISSION OF TH...

STATE OF CALIFORNIA

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Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060	))))	Rulemaking 02-01-011 (Filed January 9, 2002)

REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON ADMINISTRATIVE LAW JUDGE PULSIFER'S DRAFT OPINION REGARDING DIRECT ACCESS AND DEPARTING LOAD COST RESPONSIBILITY SURCHARGE OBLIGATIONS

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Dated: July 17, 2006

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I. INTRODUCTION

Pursuant to Rule 77 of the Commission's Rules of Practice and Procedure, Southern California Edison Company ("SCE") respectfully submits these reply comments on Administrative Law Judge ("ALJ") Pulsifer's Draft Opinion (the "Draft Opinion") Regarding Direct Access and Departing Load Cost Responsibility Surcharge Obligations. SCE limits its reply comments to the opening comments filed by the California Municipal Utilities Association ("CMUA"), Northern California Power Agency ("NCPA"), Turlock Irrigation District ("Turlock"), South San Joaquin Irrigation District ("SSJID"), and jointly by Merced Irrigation District and Modesto Irrigation District on the Municipal Departing Load (MDL) issues.

II. DISCUSSION

A. SSJID's Request that the Market Price Methodology Apply Retroactively Should be Rejected

SSJID recommends that the Draft Opinion be revised to provide that "[f]or 2004-06, the MDL CRS accrual rates for both those MDL Customers who pay the DWR power charge and those MDL Customers who do not pay the DWR power charge will be those set forth . . . under the DL recommended methodology and benchmark."[1] SSJID proffers a table that contains MDL CRS accrual rates "all calculated using the recommended benchmark."[2] SSJID's recommendation appears to be tantamount to a request that the Draft

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1 *See* Comments of SSJID at p. 2.

2 *See id.*

Opinion apply the Working Group recommended market price benchmark methodology retroactively to 2004 and 2005, instead of prospectively beginning in 2006, as adopted in the Draft Opinion.

SSJID's recommendation should be rejected. The Draft Opinion correctly adopts the Working Group's recommendation to incorporate the revised market price benchmark methodology for the CRS calculation of bundled customer indifference *on a prospective basis* beginning in 2006.[3] The Draft Opinion also finds it reasonable to apply the market price benchmark to MDL consistent with its application to direct access (DA) beginning in 2006.[4]

If SSJID seeks a market price benchmark for MDL for 2004 and 2005 consistent with the DA benchmarks for these years, SCE would be amenable to applying to MDL the same market price benchmarks negotiated with DA customers and adopted by the Draft Opinion for SCE for 2004 ($53/MWh) and 2005 ($64/MWh), which already include losses.

B. Turlock is Mistaken in Claiming that Calculating a CRS Loan Credit for MDL Customers is Easy

The Draft Opinion declines to authorize a credit to individual customers who depart bundled service for municipal service prior to the full repayment of the CRS undercollection. The Draft Opinion finds that the entitlement of bundled customers as a group to the repayment of the CRS loan does not entitle individual customers to retrospective refunds. Instead, the CRS loan is repaid as a prospective adjustment to bundled customers' charges. Additionally, the Draft Opinion finds that retrospective refunds to individual MDL customers would be administratively burdensome.[5]

Turlock asks the Commission to reject the Draft Opinion's findings, and authorize a credit to MDL customers. Turlock claims the credit calculation for each MDL customer can be done with "ease" based on when the customer departs the IOU's service: "once the vintage [of departing load] is established, the amount of the overpayment made by the departing customers is established."[6] If this were correct, then SCE would have to agree that it would be relatively easy to calculate such refunds. However, Turlock's claim is *not correct*, and SCE does not agree with Turlock. A CRS loan credit cannot be calculated simply based on the vintage of departing load. This is because each customer contributed to the CRS loan differently based on the customer's rate class and other factors.

Providing CRS loan credits to individual MDL customers would involve calculating what each departing load customer contributed to the CRS loan based on rate class usage, its CRS vintage, and the CRS components applicable to the customer during the CRS loan period. In short, it would involve a complex

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3 *See* Draft Opinion at p. 10-12, Finding of Fact 11, Conclusion of Law 2.
4 *See* Draft Opinion at p. 30 and Conclusion of Law 11.
5 *See* Draft Opinion's discussion at p. 37.
6 *See* Comments of Turlock Irrigation District at Section II.

calculation for each customer, which would be administratively burdensome, as the Draft Opinion correctly finds.

The Commission should reject Turlock's contentions, and adopt the Draft Opinion's findings on this issue.

C. CMUA's Requests on the Negative Indifference Charge Have No Merit

The Draft Opinion finds that a negative ongoing CTC-plus-PCIA ("negative indifference charge") shall not offset other components of CRS, like the DWR bond charge. The Draft Opinion reasons that any reduction provided to MDL customers, whether by a direct refund or a reduction in another CRS component, must be funded by the remaining bundled service customers, and MDL customers should not be paid for departing the IOUs' procurement activities.[7]

CMUA asks the Commission to reject this reasoning, and allow a negative indifference charge to offset other CRS components.[8] CMUA admits that any reduction in another CRS component like the DWR bond charge must be funded by the remaining bundled service customers. But, CMUA claims that any funding by the remaining bundled service customers will be "fully offset by real cost 'savings' associated with the IOUs' procurement activities."

The Commission should be wary of CMUA's claim. CMUA fails to acknowledge that any reduction in the DWR bond charge would be funded by the remaining bundled service customers *as well as* the DA customers. Yet, DA customers do not receive any benefit from low-cost power associated with the IOU's procurement activities.

In addition, there is simply no reasonable basis for using a negative indifference charge to offset the DWR bond charge. The DWR power charge is a separate cost from the DWR bond charge, and paid for a different purpose and accounted for differently. The DWR bond charge is a nonbypassable rate component,[9] which funds approximately $11 billion DWR borrowed during the energy crisis to provide energy to the IOUs' customers, who now may depart to a POU. It is a real cost that must be paid to the bondholders, and it cannot be funded by a negative indifference charge offset for MDL customers that provides no cash, unless all other customers are forced to subsidize MDL customers' share.

The Commission should also reject CMUA's request that this issue be reserved for disposition in the Commission's rehearing of Economic Development Rates (EDR).[10] There is no basis for moving the negative indifference charge issue to the EDR rehearing. SCE offers discounted rates under EDR for the purpose of retaining customers and preserving a positive contribution to margin, which helps lower the rates of other

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7 *See* Draft Opinion's discussion at p. 39-40.
8 *See* Comments of CMUA at p. 3-4.
9 *See* Section 366.2(d)(1) and 366.2(g)(2) of the California Public Utilities Code.
10 *See* Comments of CMUA at p. 5.

customers. This has nothing to do with CMUA's attempt to obtain a discount for MDL customers of their DWR bond charge obligations through an offsetting negative indifference charge, or in other words, rewarding customers to depart to POUs.

D. The Draft Opinion Should be Revised to Reconcile Inconsistent Directives on Carrying Forward Negative Indifference Charges

NCPA argues that the Draft Opinion should be revised to allow a negative indifference charge to be carried forward to offset a positive indifference change in future years.[11] In reviewing the Draft Opinion's discussion of this issue, SCE notes that the Draft Opinion appears to be inconsistent in its treatment of the negative indifference charge. Notably, in Section II.D.2, the Draft Opinion finds that once the existing DA CRS undercollection is eliminated, the indifference charge shall not be permitted to decrease below zero, and no negative balance shall be carried forward.[12] The Draft Opinion makes it clear that in no event shall a negative indifference charge result in a payment to departing customers. But, then the Draft Opinion directs that "any accumulated negative indifference amount shall continue to be tracked and applied to future positive indifference amounts that may accrue in later years of the applicability of the DA CRS."[13] This directive conflicts with the previous finding that no negative balance shall be carried forward. Ordering Paragraphs 8 and 9 of the Draft Opinion also contain these conflicting directives.[14] [15]

The Draft Opinion should be revised to reconcile these conflicting directives, and apply a consistent treatment of negative indifference charges to DA and DL customers. Based on the opening comments of the DA Agreement Parties (including SCE), SCE supports a revision that allows a negative indifference charge to be carried forward to apply to a future positive indifference charge for both DA and DL customers.[16]

III. CONCLUSION

SCE urges the Commission to adopt the Draft Opinion with the revisions discussed in SCE's opening comments and these reply comments.

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[11] *See* Comments of NCPA at p. 5-6.

[12] *See* Draft Opinion's discussion at p. 18.

[13] *Id.*

[14] *See* Ordering Paragraph ("OP") 8 and the last sentence in OP 9; *see also* Finding of Fact ("FOF") 27: "once the existing CRS undercollection is eliminated, the indifference charge for non-exempt DA customers should not be permitted to decrease below zero, and that no negative balance should be carried forward," and

[15] *See also* the Draft Opinion's treatment of a negative indifference charge for DL, at p. 40 and Conclusion of Law 15: "the indifference charge should remain nonnegative after the CRS undercollection is eliminated . . ."

[16] *See* Appendix 1 to the Motion of the Direct Access Agreement Parties to Submit One Day Out of Time Proposed Modifications to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs of the Draft Decision of ALJ Pulsifer, at FOF 27 and OP 8, suggesting revisions to allow for any accumulated negative indifference amount to be

Continued on the next page

Respectfully submitted,

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July 17, 2006

Continued from the previous page
tracked and applied to any future positive indifference amounts that may accrue in later years of the applicability of the DA CRS, once the existing DA CRS undercollection is eliminated.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of ***REPLY COMMENTS OF SCE ON ALJ PULSIFER'S DRAFT OPINION REGARDING DIRECT ACCESS AND DEPARTING LOAD COST RESPONSIBILITY SURCHARGE OBLIGATIONS*** on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **17th day of July, 2006,** at Rosemead, California.

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